

Thirteenth Kerala Legislative Assembly

Bill No. 118

**THE KERALA STATE WATER RESOURCES REGULATORY
AUTHORITY BILL, 2012**

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[Translation in English of the “2012-ലെ കേരള സംസ്ഥാന ജലവിഭവ റഗുലേറ്ററി അതോറിറ്റി ബിൽ” published under the authority of the Governor.]

**THE KERALA STATE WATER RESOURCES REGULATORY
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A

BILL

to provide for the constitution of the Kerala State Water Resources Regulatory Authority for the State to facilitate effective utilization of water resources within the State, ensure its sustainable and scientific management for drinking, agriculture, industrial and other purposes.

Preamble.—WHEREAS, it is expedient to constitute the Kerala State Water Resources Regulatory Authority for the State to facilitate effective utilization of water resources within the State, to ensure its sustainable and scientific management for drinking, agriculture, industrial and other purposes and matters connected therewith or incidental thereto;

BE it enacted in the Sixty-third Year of the Republic of India, as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala State Water Resources Regulatory Authority Act, 2012.

(2) It shall be deemed to have come into force on the 27th day of February, 2012.

2. *Definitions.*—(1) In this Act, unless the context otherwise requires,—

(a) “Authority” means the Kerala State Water Resources Regulatory Authority constituted under section 3;

(b) “Chairperson” means the Chairperson of the Authority;

(c) “category of use” means the use of water for different purposes such as for domestic, agriculture irrigation, agro-based industries, industrial or commercial, environmental, etc., and includes such other purposes as may be prescribed;

(d) “Government” means the Government of Kerala;

(e) “irrigation project” means a project constructed to provide irrigation facilities to the land situated in the command area in accordance with the project report and orders issued in this regard, as revised from time to time;

(f) “member” means a Member of the Authority and includes the Chairperson;

(g) “notification” means a notification published in the Official Gazette;

(h) “prescribed” means prescribed by rules made under this Act;

(i) “Selection committee” means a selection committee constituted under section 5;

(j) “State” means the State of Kerala;

(k) “Water Users’ Association” means a Water Users’ Association as defined in the Kerala Irrigation and Water Conservation Act, 2003 (31 of 2003).

(2) Words and expressions used and not defined in this Act but defined in various irrigation or water resources related Acts in the State shall have the meanings respectively assigned to them in those Acts.

CHAPTER II

CONSTITUTION OF THE AUTHORITY

3. *Constitution of the Authority.*—(1) The Government shall, within three months from the date of commencement of this Act, by notification constitute an authority called the Kerala State Water Resources Regulatory Authority to perform the powers and functions under this Act.

(2) The Authority constituted under sub-section (1) shall be a body corporate by name aforesaid, having perpetual succession and a common seal with power, subject to the provisions of this Act, to contract, acquire, hold and dispose of property both movable and immovable and shall by the said name sue and be sued.

(3) The Head of office of the Authority shall be at Thiruvananthapuram.

4. *Composition of the Authority.*—(1) The Authority shall consists of three members including the Chairperson.

(2) The Chairperson and other members shall be appointed by the Governor of Kerala on the recommendation of the Selection Committee constituted under section 5.

(3) The Chairperson shall be a person who is of the rank of a Chief Engineer in the Government Service and the other two members, of whom one shall be an expert from the field of Water Resource Engineering and the other shall be an academician in the field of Water Resource not below the rank of Professor in a Government College.

(4) The Authority may, as and when needed, invite special invitees from,—

(a) experts who are having adequate knowledge, experience or proved capacity in dealing with the problems relating to engineering, agriculture, drinking water, industry, law, economics, commerce, finance or management, for assisting the Authority in taking policy decisions, and

(b) members from Farmers Organizations within the State.

(5) The members of the Authority shall not hold any other office of profit.

5. *Constitution and functions of Selection Committee.*—(1) The Government shall, by notification, for the purposes of selection of the Chairperson and other members of the Authority, constitute a Selection Committee consisting of,—

(a) The Chief Secretary of the State—*Ex-officio* Chairperson;

(b) Secretary to Government, Finance Department—*Ex-officio* Member;

(c) Secretary to Government, Water Resources Department and Command Area Development—Convenor.

(2) The Government shall within one month from the date of occurrence of any vacancy by reason of death, resignation or removal of the Chairperson or member of the Authority and six months before the superannuation or end of tenure of Chairperson or any member, make a reference to the Selection Committee for selection.

(3) The Selection Committee shall finalise the selection of the Chairperson and members within one month from the date on which the reference is made to it.

(4) The Selection Committee shall recommend a panel of two names for every vacancy referred to it.

(5) Before recommending any person for appointment as the Chairperson or member of the Authority, the Selection Committee shall satisfy itself that such person does not have any financial or other interest, which is likely to affect prejudicially his function as a member.

(6) No appointment of the Chairperson and members of the Authority shall be invalid merely by reason of any vacancy in the Selection Committee.

6. *Term of office.*—(1) The Chairperson and members of the Authority shall hold office for a period of five years or till attaining the age of 65 years, whichever is earlier.

(2) The Chairperson and the members of the Authority shall not be eligible for a second term appointment.

7. *Salaries and allowances of members.*—(1) The Chairperson and members of the Authority shall be paid such salaries and such allowances as may be prescribed.

(2) The salary and allowances and other conditions of services of the Chairperson and Members of the Authority shall not be varied to their disadvantage after appointment.

8. *Conditions of Service.*—(1) Notwithstanding anything contained in section 6, the Chairperson and members of the Authority may,—

(a) by writing under his hand and addressed to Government, resign his office at any time after giving a notice of not less than three months; or

(b) be disqualified from his office in accordance with the provisions of section 9.

(2) The Chairperson and members of the Authority ceasing to hold office as such shall,—

(a) not be eligible for further employment under the Government for a period of two years from the date the person ceases to hold such office;

(b) not accept any commercial employment for a period of two years from the date the person ceases to hold such office.

Explanation:—For the purposes of this sub-section,—

(i) “employment under the Government” includes, employment under any Local or other Authority within the territory of the State or under the control of the Government or under any corporation or society owned or controlled by the Government;

(ii) “commercial employment” means employment in any capacity under or agency of a person engaged in trading, commercial, industrial or financial business in the Water Resources Sector and also includes a director of a company or partner of a firm and also includes setting up practice either independently or as partner of a firm or as an advisor or a consultant.

9. *Disqualifications for membership of the Authority.*—(1) A person shall be disqualified for being appointed as, or for being, a Chairperson and members of the Authority if,—

(a) he is of unsound mind and stands so declared by a court of competent jurisdiction or has become incapable of continuing as such due to physical or mental disability; or

(b) he is declared as an undischarged insolvent; or

(c) he has been convicted for an offence which in the opinion of the Government involves moral turpitude or financial irregularities;

(d) he has such financial or other interest as is likely to affect prejudicially his functions as a member of the Authority; or

(e) it is proved beyond reasonable doubt that he has so abused his official position so as to render his continuance in office prejudicial to public interest.

(2) Subject to the provisions of sub-section (1), the Chairperson or members of the Authority, as the case may be, shall be removed from office by order of the Governor on the ground of proved misbehaviour in an enquiry held in accordance with the procedure as may be prescribed.

(3) The Governor may, during the period of inquiry as specified in sub-section (2), suspend the Chairperson or members of the Authority.

10. *Powers of the Authority to appoint officers and employees and their conditions of service.*—The Authority may, with the prior approval of the Government, appoint a secretary and such number of officers and employees as it consider necessary for the performance of its duties and functions in such manner and subject to such terms and conditions as may be prescribed.

11. *Sittings of the Authority.*—(1) The Authority shall hold its sittings at such place and at such times as may be determined by Chairperson.

(2) The quorum for the sitting of the Authority including the Chairperson shall be two.

(3) If the Chairperson is unable to attend a sitting of the Authority, any other member nominated by the Chairperson in this behalf and, in the absence of such nomination or where there is no Chairperson, any member chosen by the members present among themselves shall preside at the sitting.

(4) All decisions of the Authority shall be on majority basis.

(5) All orders and decisions of the Authority shall be authenticated by the secretary or any other officer of the Authority duly authorized by the Chairperson in this behalf.

12. *Vacancies, etc., not to invalidate act or proceedings.*—(1) No act or proceedings of the Authority shall be questioned or shall be invalidated merely on the ground of existence of any vacancy in the Authority.

CHAPTER III

POWERS, FUNCTIONS AND DUTIES OF THE AUTHORITY

13. *Powers, Functions and Duties of the Authority.*—The Authority shall have the following powers and functions, namely:—

(i) To determine the water requirement for various categories of users on a yearly or seasonal basis;

(ii) To determine the requirement of irrigation water for the various levels of Farmers Organizations namely, Project Committee, Distributor Committee and Water Users Association;

(iii) To establish a water tariff system and to fix the criterion for water charges for different users such as domestic, irrigation and industrial at different levels after ascertaining the views of the beneficiary public based on cost of project management, administration, operation and maintenance of such Water Resources Project;

(iv) To determine the adequate operation and maintenance cost of irrigation and multi-purpose water projects. For that the State shall ensure provisions for full operation and maintenance requirements of such projects as determined by the Authority, through an appropriate budgetary support, to ensure that the quality of the service delivery is not allowed to suffer for want of Systems Operation and Maintenance needs;

(v) To promote efficient management of irrigation water by providing guidelines or procedures or modalities for plough back of operation and maintenance amount to the farmers organizations for the operation and maintenance of the irrigation systems as well as standards of services;

(vi) Monitoring the technical standards for operation and maintenance, cyclical repairs and minimum rehabilitation of irrigation system;

(vii) To ensure that the principle of “tail to head” irrigation is implemented by the project authorities;

(viii) To promote efficient use of water resources and minimizing wastage of water by,—

(a) fixing and monitoring implementation of stipulated quality standards for management of water resources by various water users, suppliers for domestic water use or departments and recommend actions against violations;

(b) fixing and monitoring implementation of stipulated quality standards for the services to be provided by various water resources service providers including domestic water supply providers and recommend actions against violations;

(c) fixing and monitoring implementation of stipulated quality standards for disposal of waste water by various water users and recommend actions against violations;

(d) fixing and monitoring implementation of stipulated standards for protection of all water resources in the State including pollution;

(e) supporting and aiding enhancement and preservation of water quality within the State in close co-ordination with the relevant State Agencies and in doing so following the principle that “the person who pollutes shall pay”.

(ix) To ensure publication of an annual report containing the following information by project authorities, namely:—

(a) Irrigation status containing all statistical data relating to irrigation including details of the project wise irrigation potential and its actual utilization, water user efficiency and productivity relating to the projects;

(b) Benchmarking of irrigation or multi-purpose water projects to identify projects with best management practices for emulation by other projects;

(c) Water audit of irrigation or multipurpose water project giving a systematic and scientific water account of the project;

(d) Water audit of domestic water suppliers.

(x) The Authority shall devise a suitable mechanism for financial incentives or disincentives to the Farmers’ Organizations and other Water Users’ Association for ensuring delivery of services to their members as per the determination;

(xi) The Authority shall in case of non-compliance of the specific directions in discharges of the power under this Act, recommend the Government to initiate suitable disciplinary action against such Government officials;

(xii) The Authority shall review and revise the water charges once in every three years.

(xiii) To perform any other power, functions and duties as assigned to the authority by the Government by notification.

14. *General policies of the Authority.*—The Authority shall work according to the framework of the State Water Policy and other existing laws of the State.

CHAPTER IV

ACCOUNTS, AUDIT AND REPORTS

15. *Grants and advances to the Authority.*—The Government may, after appropriation duly made by the State Legislature by law in this behalf, make such grants and advances to the Authority as it may deem necessary for the performance of its functions and discharges of its duties under this Act and all grants and advances made shall be on such terms and conditions as the Budget of the State Government may determine.

16. *Budget of the Authority.*—The Authority shall prepare in such form and at such time in each financial year, as may be prescribed, its budget for the next financial year and forward it to the Government.

17. *Accounts of Authority.*—(1) The Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Government in consultation with the Accountant General.

(2) The Accounts of the Authority shall be audited annually by the Accountant General and any expenditure incurred in respect of such audit shall be payable by the Authority to the Accountant General.

(3) The Accountant General and any person appointed by him in connection with the audit of the account of the Authority under this Act shall have the same rights and privileges as the Accountant General generally has in connection within audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Authority.

(4) The accounts of the Authority, as certified by the Accountant General or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the Government by the Authority and the Government shall cause the audit report to be laid, within a period of six months from the date of its receipt, before the State Legislature.

18. *Annual Report of the Authority.*—(1) The Authority shall prepare a report of its function of that year under this Act and the same shall be submitted to Government in such form on or before such date as may be prescribed.

(2) A copy of the report received under sub-section (1) shall be laid before the Legislative Assembly within six months, after the same is received by the Government.

CHAPTER V

MISCELLANEOUS

19. *General Powers of the State Government.*—The Government shall have the power to issue policy directions to the Authority on matters concerning water in the State including the overall planning and co-ordination.

20. *Members, officers and other staff of Authority shall be public servants.*—The Chairperson, members, officers and other employees of the Authority shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (Central Act 45 of 1860).

21. *Protection of action taken in good faith.*—No suit, prosecution or other legal proceedings shall lie against the Chairperson or members or Secretary or other employees of the Authority for anything which is done or purported to be done in good faith in pursuance of the provisions of this Act or Rules or regulations made thereunder.

22. *Power to remove difficulties.*—(1) If any difficulty arises in giving effect to the provision of this Act, the Government may, by order, as occasion requires, do anything not inconsistent with the provisions of this Act, which appears to them to be necessary for the purpose of removing the difficulty:

Provided that no such order shall be made after the expiry of two years from the date of commencement of this Act.

(2) Every order made under sub-section (1) shall be laid before the Legislative Assembly.

23. *Power to make Rules.*—(1) The Government may, by notification, make rules for the purpose of carrying into effect the provisions of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be, after it is made, before the Legislative Assembly while it is in session for a period of fourteen days which may be comprised in one session or in two successive sessions and if before the expiry of the session in which it is so laid

or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

24. *Dispute Resolution Mechanism.*—(1) The Government shall by an order issue in its behalf authorize any competent officer or officers for each project as Primary Dispute Resolution Officer to resolve the disputes in respect the issuance or delivery of determined water under the Act.

(2) The Primary Dispute Resolution Officer shall follow such procedure as may be prescribed while hearing the disputes.

25. *Power of Authority to make regulations.*—The Authority may with the previous approval of the Government, make regulations, for discharging its duties, consistent with this Act and the rules made thereunder.

26. *Repeal and saving.*—(1) The Kerala State Water Resources Regulatory Authority Ordinance, 2012 (34 of 2012) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act.

STATEMENT OF OBJECTS AND REASONS

The 13th Finance Commission has recommended the constitution of a Water Resources Regulatory Authority in each State to facilitate the effective utilization of water resources, to determine the water tariff, to fix, regulate and distribute the water charges for water used for domestic, agricultural and industrial purposes and to review periodically and monitor the income and expenditure in the water sector to ensure its sustainable and scientific management. The Government have examined the recommendation in detail and decided to enact a legislation for the constitution of Kerala State Water Resources Regulatory Authority to ensure the sustainable and scientific management of the water resources and for the purposes of the above said different categories and for monitoring and periodically reviewing the income and expenditure in the water sector.

2. As the Legislative Assembly of the State of Kerala was not in session and the above proposals had to be given effect to immediately, the Kerala State Water Resources Regulatory Authority Ordinance, 2011 was promulgated by the Governor of Kerala on the 30th day of November, 2011 and the same was published as Ordinance No. 55 of 2011 in the Kerala Gazette Extraordinary No. 2256 dated 30th November, 2011.

3. A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in and passed by the Legislative Assembly of the State of Kerala in its session which commenced on the 9th day of December, 2011 and ended on the same day. Hence in order to keep alive the provisions of the said Ordinance, the Kerala State Water Resources Regulatory Authority Ordinance, 2012 was promulgated by the Governor of Kerala on the 16th day of January, 2012 and the same was published as Ordinance No. 8 of 2012 in the Kerala Gazette Extraordinary No. 133 dated 19th January, 2012.

4. A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in and passed by, the Legislative Assembly of the State of Kerala during its Session which commenced on the 1st day of March, 2012 and ended on the 23rd day of March, 2012. Hence in order to keep alive the provisions of the said Ordinance, the Kerala State Water Resources Regulatory Authority Ordinance, 2012 was promulgated by the Governor of Kerala on the 11th day of April, 2012 and the same was published as Ordinance No. 34 of 2012 in the Kerala Gazette Extraordinary No. 736 dated 11th April, 2012.

5. This Bill seeks to replace the Ordinance No. 34 of 2012 by an Act of the State Legislature.

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for the constitution of Authority and clause 7 of the Bill provides for granting salaries and allowances to the members. Clause 10 of the Bill provides for the appointment of officers and employees to the Authority. Clause 15 of the Bill provides for giving grants and advances by the Government to the Authority to carry out its functions and discharge its duties on such terms and conditions as the Government may determine in the Budget. Sub-clause (2) of clause 17 of the Bill provides that the expenditure incurred in respect of the annual audit of the Authority should be paid to the Accountant General by the Authority. In accordance with the said provisions, for the constitution of the Authority, salaries to the officers and employees of the Authority, other allowances, infrastructure facilities and other expenses related to it and expenses related to audit etc. an expenditure of an approximate amount of ₹ 28,50,000 as recurring and ₹ 12,00,000 as non-recurring have to be met from the Consolidated Fund of the State.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill seeks to empower the Government to constitute, by notification, an Authority called Kerala State Water Resources Regulatory Authority.

2. Clause 5 of the Bill seeks to empower the Government to constitute, by notification, a selection committee for the purpose of selection of chairperson and members of the Authority.

3. Sub-clause (1) of clause 7 of the Bill seeks to empower the Government to prescribe the salaries and allowances to be paid to the members and Chairperson.

4. Sub-clause (2) of clause 9 of the Bill seeks to empower the Government to prescribe the procedure to prove the misbehaviour of the Chairperson or members of the Authority.

5. Sub-clause (1) of clause 10 of the Bill seeks to empower the Government to prescribe the manner, terms and conditions of appointment of a Secretary, officers and employees to the Authority.

6. Item (xiii) of clause 13 of the Bill seeks to empower the Government to assign to the Authority, by notification, other powers, functions and duties not mentioned in the said clause.

7. Clause 16 of the Bill seeks to empower the Government to prescribe the form and time for preparing the budget of the Authority in each financial year.

8. Clause 17 of the Bill seeks to empower the Government to prescribe the form to prepare an annual statement of accounts of the Authority.

9. Clause 18 of the Bill seeks to empower the Government to prescribe the such form and such time to prepare the annual report of functions of the Authority in each year.

10. Clause 19 of the Bill seeks to empower the Government to issue policy directions to the Authority on matters including the overall planning and co-ordination.

11. Clause 22 of the Bill seeks to empower the Government to issue order not inconsistent with the provisions of this Act to remove any difficulty arises in giving effect to the provisions of this Act.

12. Clause 23 of the Bill seeks to empower the Government to make rules by notification for the purpose of carrying into effect the provisions of this Act.

13. Clause 24 of the Bill seeks to empower the Government, to authorise any competent officer or officers as Primary Dispute Resolution Officer for each project through an order issued in this behalf.

14. Clause 25 of the Bill seeks to empower the Authority to make regulations with the previous approval of the Government, for discharging the duties of the Authority.

The matters in respect of which notifications or orders may be issued or rules or regulations may be made, are matters of procedure and are of routine and administrative in nature. Further, the rules are subject to the scrutiny of the Legislative Assembly. The delegation of legislative power is, therefore, of a normal character.

P. J. JOSEPH.

NOTES ON CLAUSES

Clause 2.—This clause seeks to define certain words and expressions used in the Bill.

Clause 3.—This clause seeks to provide for the constitution of Kerala State Water Resources Regulatory Authority, by notification.

Clause 4.—This clause seeks to provide for the composition of the Authority.

Clause 5.—This clause seeks to provide for the constitution and functions of Selection Committee by notification.

Clause 6.—This clause seeks to provide for the term of office of chairperson and members of the Authority.

Clause 7.—This clause seeks to prescribe the salaries and allowances of the members.

Clause 8.—This clause seeks to provide for the conditions of service of the members and chairperson of the Authority.

Clause 9.—This clause seeks to provide the disqualification for membership in the Authority.

Clause 10.—This clause seeks to provide the authority to appoint officers and employees to the Authority and to prescribe their conditions of service.

Clause 11.—This clause seeks to provide for the sitting of the Authority.

Clause 12.—This clause seeks to provide that any act or proceedings of the Authority shall not be questioned or invalidated on the ground of existence of any vacancy in the Authority.

Clause 13.—This clause seeks to provide for powers, functions and duties of the Authority.

Clause 14.—This clause seeks to provide for the general policies of the Authority.

Clause 15.—This clause seeks to provide for payment of grants and advances to the Authority.

Clause 16.—This clause seeks to provide for preparing the Budget of the Authority.

Clause 17.—This clause seeks to provide the manner of preparation of accounts of the Authority.

Clause 18.—This clause seeks to provide for the manner of preparing the annual report of the Authority.

Clause 19.—This clause seeks to provide the general powers of the State Government to issue policy directions to the Authority.

Clause 20.—This clause seeks to provide that the Chairperson, members, officers and other employees of the Authority shall be public servants.

Clause 21.— This clause seeks to provide for ensuring protection of action taken in good faith by the Chairperson, members, Secretary or other employees of the Authority.

Clause 22.—This clause seeks to provide to empower Government to issue orders for the purpose of removing difficulty in giving effect to the provisions of this Act.

Clause 23.—This clause seeks to provide to empower the Government to make rules by notification.

Clause 24.—This clause seeks to provide to empower the Government to issue order to authorise Primary Dispute Resolution Officers in each project.

Clause 25.—This clause seeks to empower the Authority to make regulations.

Clause 26.—This clause seeks to provide to repeal the Kerala State Water Resources Regulatory Authority Ordinance (34 of 2012) and to deem anything done or any action taken under the repealed Ordinance as that have been done or taken under this Act.
